

UNITED STATES DISTRICT COURT

for the
Eastern District of Missouri

United States of America

v.

KYLE GREEN

Defendant

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Case No. 4:19CR583SRC(NAB)

ORDER OF DETENTION PENDING TRIAL

Part I - Eligibility for Detention

Upon the

- ☒ Motion of the Government attorney pursuant to 18 U.S.C. § 3142(f)(1), or
☐ Motion of the Government or Court's own motion pursuant to 18 U.S.C. § 3142(f)(2),

the Court held a detention hearing and found that detention is warranted. This order sets forth the Court's findings of fact and conclusions of law, as required by 18 U.S.C. § 3142(i), in addition to any other findings made at the hearing.

Part II - Findings of Fact and Law as to Presumptions under § 3142(e)

- ☐ **A. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(2)** (*previous violator*): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of any other person and the community because the following conditions have been met:
- ☐ **(1)** the defendant is charged with one of the following crimes described in 18 U.S.C. § 3142(f)(1):
 - ☐ **(a)** a crime of violence, a violation of 18 U.S.C. § 1591, or an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed; **or**
 - ☐ **(b)** an offense for which the maximum sentence is life imprisonment or death; **or**
 - ☐ **(c)** an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508); **or**
 - ☐ **(d)** any felony if such person has been convicted of two or more offenses described in subparagraphs (a) through (c) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (a) through (c) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; **or**
 - ☐ **(e)** any felony that is not otherwise a crime of violence but involves:
 - (i)** a minor victim; **(ii)** the possession of a firearm or destructive device (as defined in 18 U.S.C. § 921);
 - (iii)** any other dangerous weapon; or **(iv)** a failure to register under 18 U.S.C. § 2250; **and**
 - ☐ **(2)** the defendant has previously been convicted of a Federal offense that is described in 18 U.S.C. § 3142(f)(1), or of a State or local offense that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed; **and**
 - ☐ **(3)** the offense described in paragraph (2) above for which the defendant has been convicted was committed while the defendant was on release pending trial for a Federal, State, or local offense; **and**
 - ☐ **(4)** a period of not more than five years has elapsed since the date of conviction, or the release of the defendant from imprisonment, for the offense described in paragraph (2) above, whichever is later.

- ☒ **B. Rebuttable Presumption Arises Under 18 U.S.C. § 3142(e)(3)** (*narcotics, firearm, other offenses*): There is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community because there is probable cause to believe that the defendant committed one or more of the following offenses:
- ☐ (1) an offense for which a maximum term of imprisonment of 10 years or more is prescribed in the Controlled Substances Act (21 U.S.C. §§ 801-904), the Controlled Substances Import and Export Act (21 U.S.C. §§ 951-971), or Chapter 705 of Title 46, U.S.C. (46 U.S.C. §§ 70501-70508);
 - ☐ (2) an offense under 18 U.S.C. §§ 924(c), 956(a), or 2332b;
 - ☐ (3) an offense listed in 18 U.S.C. § 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;
 - ☐ (4) an offense under Chapter 77 of Title 18, U.S.C. (18 U.S.C. §§ 1581-1597) for which a maximum term of imprisonment of 20 years or more is prescribed; **or**
 - ☒ (5) an offense involving a minor victim under 18 U.S.C. §§ 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425.

☒ **C. Conclusions Regarding Applicability of Any Presumption Established Above**

- ☐ The defendant has not introduced sufficient evidence to rebut the presumption above.

OR

- ☒ The defendant has presented evidence sufficient to rebut the presumption, but after considering the presumption and the other factors discussed below, detention is warranted.

Part III - Analysis and Statement of the Reasons for Detention

After considering the factors set forth in 18 U.S.C. § 3142(g) and the information presented at the detention hearing, the Court concludes that the defendant must be detained pending trial because the Government has proven:

- ☒ By clear and convincing evidence that no condition or combination of conditions of release will reasonably assure the safety of any other person and the community.
- ☐ By a preponderance of evidence that no condition or combination of conditions of release will reasonably assure the defendant's appearance as required.

In addition to any findings made on the record at the hearing, the reasons for detention include the following:

- ☒ Weight of evidence against the defendant is strong
- ☒ Subject to lengthy period of incarceration if convicted
- ☐ Prior criminal history
- ☐ Participation in criminal activity while on probation, parole, or supervision
- ☐ History of violence or use of weapons
- ☐ History of alcohol or substance abuse
- ☐ Lack of stable employment
- ☐ Lack of stable residence
- ☐ Lack of financially responsible sureties
- ☐ Lack of significant community or family ties to this district

- ☐ Significant family or other ties outside the United States
- ☐ Lack of legal status in the United States
- ☐ Subject to removal or deportation after serving any period of incarceration
- ☐ Prior failure to appear in court as ordered
- ☐ Prior attempt(s) to evade law enforcement
- ☐ Use of alias(es) or false documents
- ☐ Background information unknown or unverified
- ☐ Prior violations of probation, parole, or supervised release

OTHER REASONS OR FURTHER EXPLANATION:

The factual basis for this order of detention consists primarily of the facts contained in the written pretrial services report, which were not disputed, testimony by FBI Agent David Rapp, which was credible, testimony by the defendant's father, Mr. William Green, which was credible, and other information and evidence proffered by the parties at the detention hearing. Evidence that defendant has lived in the greater St. Louis metropolitan area for over 20 years; has strong family and community ties; has family willing to post a financial bond and to arrange for a home plan that would be acceptable to the Court and pretrial services; has no significant prior criminal history; and is amenable to restrictions such as computer access restrictions, location monitoring, and home detention are all factors that tend to rebut the presumption for pretrial detention in this case.

However, the undersigned has also considered the nature and circumstances of the charged offense, including the fact that it appears to involve a crime involving a minor; specifically, defendant appears to have attempted to entice a minor online and is alleged to have gone so far as to go to a hotel purportedly to have sex with a 14 year old girl and her mother. The undersigned has also considered the defendant's history and personal characteristics, including evidence that defendant may have untreated depression with suicidal ideations and unchecked compulsions related to the alleged offense. Specifically, evidence presented at the hearing suggests that, less than six months after being the target of a sting operation in which defendant was arrested when he appeared at a hotel purportedly to have sex with a minor, defendant was the target of a second non-law enforcement sting operation in which it appears defendant visited a McDonald's restaurant to meet underage girls who he allegedly attempted to entice to have sex with him. Finally, the undersigned has considered the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; specifically, the danger that defendant's release may pose to minor females. As set out above, there is compelling evidence in this case that, within a span of less than a year, defendant was caught on two separate occasions apparently actively attempting to entice minor females to have sex with him. Based on the record presented, it appears the defendant did not have physical contact with minor females on those two instances only because, fortuitously and unbeknownst to the defendant, those instances involved fictitious minors as part of a sting operation. While defendant certainly retains the presumption of innocence pending trial, the nature and seriousness of the danger to minor girls specifically and the community at large is significant and, hence, is a factor the Court cannot ignore particularly in light of the allegations and evidence submitted in support of those allegations.

In sum, when the rebuttable presumption for detention is considered together with the foregoing facts and the record as a whole, there is clear and convincing evidence that no conditions would reasonably assure the safety of the community if defendant is released.

Part IV - Directions Regarding Detention

The defendant is remanded to the custody of the Attorney General or to the Attorney General's designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant must be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility must deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

Date: 08/14/2019Shirley P. Mensah

United States Magistrate Judge